

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT A. BENSHOOF; A.R.W. by and through
his father, KURT A. BENSHOOF,

No. 2:24-cv-00808-JHC

Plaintiffs,

v.

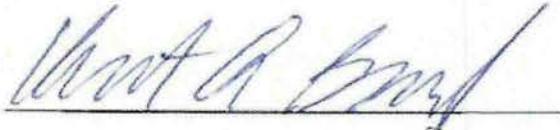
MARSHALL FERGUSON, J. DOE, BLAIR
RUSS, JESSICA SKELTON, MICHAEL
TRACY, SARAH TURNER, JAMAL
WHITEHEAD,

PLAINTIFF'S NOTICE OF APPEAL
OF "ORDER GRANTING
DEFENDANT MARSHALL
FERGUSON'S MOTION TO DISMISS
PURSUANT TO FRCP 12(b)(6)"

I. NOTICE

Plaintiffs hereby give notice to the Ninth Circuit Court of Appeals from the Court's Order
FILED ON November 15, 2024, Dismissing Plaintiffs' Complaint With Prejudice. (Dkt. #
51). See attached EXHIBIT A

RESPECTFULLY SUBMITTED,



Kurt Benshoof, Plaintiff *pro se*
1716 N 128th Street
Seattle, WA 98133
**King County Correctional Facility –
Seattle¹**
B/A 2024-008067, UCN# 10518097
500 Fifth Ave., Seattle, WA 98104
Email: kurtbenshoof1@gmail.com

¹ Subject to change without notice, mail delivery [send/receive] not guaranteed.

The foregoing statements of fact were typed up by the undersigned, upon Mr. Kurt Benshoof's request and to the best of the undersigned's understanding.²

Signature: _____



Date: _____

November 26, 2024

/URVE MAGGITT / urve.maggitti@gmail.com

² See *Faretta v. California* and Section 35 of the **Judiciary Act of 1789**, 1 Stat. 73, 92

AFFIDAVIT

Petitioner KURT ALDEN BENSHOOF, has declared his intent that URVE MAGGITTI shall have the general authority to file Petitions for Writs of Habeas Corpus, Amicus Briefs, and Next Friend Petitions on his behalf into all of his legal actions³; therefore, KURT ALDEN BENSHOOF has designate URVE MAGGITTI as a “next friend” of his, and as one of his "assistance of counsel".

In 1975 in *Faretta v. California*, United States Supreme Court acknowledges an established historical fact: “Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment *813 was proposed, provided that ‘in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel . . .’ The right is currently codified in 28 U.S.C. s 1654.”⁴

The Court quoted from Section 35 of the **Judiciary Act of 1789, 1 Stat. 73, 92** which states as follows:

“SEC. 35. And be it further enacted, **That in all courts** of the United States, the **parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law**”⁵

Judiciary Act of 1789 was passed before ratification of the Sixth Amendment in the Bill of Rights in 1791. The drafters of the Sixth Amendment had deliberately removed the word **attorneys at law** from the Sixth Amendment, and substantially amended the language to read: **“right to have the Assistance of Counsel.”**

Signature: _____



Date: _____



/URVE MAGGITTI / urve.maggitti@gmail.com

³ Next friend standing allows a third party to petition for habeas corpus on behalf of the real party in interest: the detainee. *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) (“Most frequently, next friends appear in court on behalf of detained prisoners who are unable, usually because of mental incompetence or inaccessibility, to seek relief themselves.”). Scott Harman-Heath, Unnamed & Uncharged: Next Friend Standing and the Anonymous Detainee, 11 Harv. Nat'l Sec. J. 420, 454 (2020)

⁴ *Faretta v. California*, 422 U.S. 806, 812–13, 95 S. Ct. 2525, 2530, 45 L. Ed. 2d 562 (1975)

⁵ “The Judiciary Act; September 24, 1789, 1 Stat. 73. An Act to Establish the Judicial Courts of the United States.” “APPROVED , September 24, 1789.”
https://avalon.law.yale.edu/18th_century/judiciary_act.asp

CERTIFICATE OF SERVICE

Plaintiff hereby certifies that the foregoing motion will be send to all counsel of record by email to the addresses listed below.

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Attorney of Record for Defendant:

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EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT A. BENSHOOF; A.R.W. by and through
his father, KURT A. BENSHOOF,

Plaintiffs,

v.

MARSHALL FERGUSON, J. DOE, BLAIR
RUSS, JESSICA SKELTON, MICHAEL
TRACY, SARAH TURNER, JAMAL
WHITEHEAD,

Defendants.

No. 2:24-cv-00808-JHC

ORDER GRANTING DEFENDANT
MARSHALL FERGUSON'S MOTION
TO DISMISS PURSUANT TO FRCP
12(b)(6)

This matter comes before the Court on Defendant Marshall Ferguson's Motion to Dismiss Pursuant to FRCP 12(b)(6). Dkt. # 44. The Court has considered materials filed in support of the motion, the rest of the file, and the governing law. Being fully advised, for the reasons below, the Court GRANTS the motion.

First, Plaintiffs did not file an opposition to the motion. Notably, Plaintiffs have recently filed documents in connection with other issues. *See, e.g.*, Dkt. # 50. The lack of an opposition may be considered by the Court "as an admission that the motion has merit." LCR 7(b)(2).

But second, apart from the foregoing procedural issue, as argued by Defendant Ferguson, the doctrine of judicial immunity bars the claims at issue—Plaintiffs are suing Defendant Ferguson

1 in connection with *his role as a trial judge in a King County Superior Court matter*. Dkt. # 1;
2 *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988).

3 Finally, the Court declines to grant leave to amend because it is clear that no amendment
4 would allow Plaintiffs to proceed in this matter against Defendant Ferguson.

5 Given the foregoing, the Court GRANTS the motion and DISMISSES all claims against
6 Defendant Ferguson with prejudice.

7 DATED this 15th day of November, 2024.

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10 JOHN H. CHUN
11 UNITED STATES DISTRICT JUDGE
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